



PLANNING COMMISSION STAFF REPORT
MAY 25, 2006

Project: COMMUNITY COMMERCIAL DISTRICT ZONING ADMINISTRATOR PERMITTED USES - (PLN2006-00303)

Proposal: To consider a Zoning Text Amendment (ZTA) reinstating certain Zoning Administrator Permitted uses that were inadvertently deleted in conjunction with Ordinance No. 19-2004 related to amusement or game devices.

Recommendation: Recommend to City Council.

Location: Applicable Citywide.

People: City of Fremont, Applicant
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Environmental Review: This proposed action is exempt from the California Environmental Quality Act because, as an error correction, it has no potential for causing a significant impact upon the environment.

EXECUTIVE SUMMARY:

This proposed Zoning Text Amendment would reinstate a series of Zoning Administrator permitted uses that were inadvertently deleted from the Community Commercial district by Ordinance No. 19-2004. The scope of change is limited to error correction, and this report illustrates the error that was made and the fact that the inadvertent omission was not intentional.

BACKGROUND AND PREVIOUS ACTIONS:

On July 13, 2004, Ordinance 19-2004 modified the review process and performance standards for amusement or game devices and arcades. Fremont Municipal Code Section 8-21103.1, related to those uses allowed in the Community Commercial (C-C) district with a Zoning Administrator Permit, was replaced in its entirety. A second column of uses unrelated to the scope of that project was inadvertently omitted from the approved exhibit. The following table shows the differences (including re-lettering) compared to previous code. See the attached informational enclosures one and two for the relevant text of Ordinance Numbers 17-2004 and 19-2004.

Table 1: Comparison of C-C Zoning Administrator uses before and after Ord. No. 19-2004

<i>Per Ordinance 17-2004</i>		<i>Per Ordinance 19-2004</i>	
(a)	Agriculture, ¹ except the raising of animals or fowl for commercial purposes.	(a)	Agriculture, ¹ except the raising of animals or fowl for commercial purposes.
(b)	Coin-operated amusement devices ^{1,2} in excess of five, subject to the regulations set forth in article 21.3 of this chapter if less than one thousand two hundred square feet in size.	--	(Deleted purposefully and incorporated into letter "e" below)
(c)	Equipment leasing and rental services, except in (H) overlay districts, if the zoning administrator determines, pursuant to the requirements set forth in Article 25.1 of this chapter, the proposed use will not have a significant adverse impact on the visual character and pedestrian orientation of the surrounding area.	(b)	Equipment rental and leasing, miscellaneous, ² except in (H) overlay districts, and only when the zoning administrator determines that the uses will no have a significant adverse impact on the visual character or pedestrian orientation of the surrounding area.
(d)	Food preparation facility for off-site consumption. ¹	(c)	Food preparation facilities for off-site consumption. ¹
(e)	Food storage and distribution facility. ¹	(d)	Food storage and distribution facilities. ¹
		(e)	Game or computing arcades ^{1,3} less than 1,200 square feet in size, except when within one-quarter mile of a high-school or junior high school.
(f)	Meal service facility. ¹	(f)	Meal service facilities. ¹
(g)	Miniature golf course. ²	(g)	Miniature golf courses. ²
(h)	Schools and educational services not elsewhere classified. ²	(j)	Schools and educational services, not elsewhere classified. ²
(i)	Small recycling collection facility. ¹	(i)	Recycling collection facilities, small. ¹
(j)	Eating places without alcoholic beverages ¹ if open after midnight.	--	(Inadvertently deleted)
(k)	Eating places with beer and wine; ¹ if open after midnight.	--	(Inadvertently deleted)
(l)	Eating places with all alcoholic beverages. ¹	--	(Inadvertently deleted)
(m)	Banquet hall ¹ if closed before midnight.	--	(Inadvertently deleted)
(n)	Exhibition or conference halls ¹ if closed before midnight.	--	(Inadvertently deleted)
(o)	Performing arts theater ¹ with less than one hundred seats.	--	(Inadvertently deleted)
(p)	Dinner theater ¹ with less than one hundred seats.	--	(Inadvertently deleted)
(q)	Concert hall ¹ with less than one hundred seats.	--	(Inadvertently deleted)
(r)	Motion picture theater ¹ with less than one hundred fifty seats.	--	(Inadvertently deleted)
(s)	Any other service use which the zoning administrator finds similar in nature, function, an operation to zoning administrator uses within the district. The request for such a determination shall be submitted as a "finding application" to the zoning administrator pursuant to the requirements set forth in Article 25.2 of this chapter.	(k)	Any other uses that the zoning administrator finds are similar in nature, function and operation to zoning administrator uses in the district.
(t)	Mixed-use developments ^{1, 3, and 4} , except for the following: (1) Areas proximate to State Route 84 and Ardenwood Boulevard; State Route 880 and Mowry Avenue, Thornton Avenue and Cushing Parkway; and, Auto Mall Parkway and Mission Boulevard between State Routes 880 and 680. (2) Uses which are listed as prohibited in Article 21.3 for mixed-use developments ³ .	(h)	Mixed-use developments ^{1,3,4} except for the following: (1) Areas proximate to State Route 84 and Ardenwood Boulevard; Interstate 880 and Mowry Avenue; Thornton Avenue and Cushing Parkway; or between Auto Mall Parkway and Mission Boulevard between Interstates 880 and 680. (2) Uses that are listed as prohibited in Article 21.3 for mixed-use developments. ³

The center column of the following table (that would not be allowed at all if the error remains) shows the deleted uses in relation to other uses permitted in the district and illustrates the gap effect of not correcting this error.

Table 2: Comparison of deleted uses' review process in relation to similar uses within the C-C district

<div style="border: 1px dashed black; padding: 5px; text-align: center; margin: 0 auto; width: fit-content;"> Uses inadvertently deleted </div>		
Permitted (FMC § 8-21101)	Zoning Administrator Permitted (FMC § 8-21103.1)	Conditionally Permitted (FMC § 8-21103)
Eating places without alcoholic beverages ¹ if closed before midnight and eating places with beer and wine ¹ if closed before midnight, except drive-in or drive-through restaurants.	Eating places without alcoholic beverages, ¹ if open after midnight.	Drinking places. ¹
	Eating places with beer and wine; ¹ if open after midnight.	
	Eating places with all alcoholic beverages. ¹	
	--	Drive-in or drive-through eating places, ¹ except in (H) overlay districts.
Theatrical producers and miscellaneous theatrical services, except burlesque companies; ² [7922]	Banquet hall ¹ if closed before midnight.	Banquet halls ¹ open after midnight.
	Dinner theater ¹ with less than one hundred seats.	Dinner theaters ¹ with 100 seats or more.
	Exhibition or conference halls ¹ if closed before midnight.	Exhibition or conference halls ¹ open after midnight.
	Performing arts theater ¹ with less than one hundred seats.	Performing arts theaters ¹ with 100 seats or more.
Motion pictures, ² [78XX] except drive-in ¹ motion picture theaters ² [7833] and adult motion picture theaters; ¹	Concert hall ¹ with less than one hundred seats.	Concert halls ¹ with 100 seats or more.
	Motion picture theater ¹ with less than one hundred fifty seats.	Motion picture theaters ¹ with 150 seats or more.

Clearly, the middle column of uses was not included in the report's discussion of "amusement or game devices" or arcades. They represent uses of intermediate complexity within their respective categories, and are appropriate for Zoning Administrator review.

PROJECT DESCRIPTION:

The removal of the Zoning Administrator Permitted uses was clearly not intended nor the reasoning therefor explained in the staff report at that time. Accordingly, the project consists of replacing the omitted uses to their original condition without modification as shown on Exhibit "A."

PROJECT ANALYSIS:

Zoning Regulations:

As set forth in Article 31 of the Fremont Municipal Code (FMC), proposed Zoning Text Amendments are required to be heard by both the Planning Commission and City Council, who make findings of "general conformance with the general plan" and that "[t]he public necessity, convenience and general welfare require the adoption of the proposed amendment." These findings are contained in Recommendations three and four below.

Environmental Review:

Since the scope of this project only involves correction of an error, this action is exempt from the California Environmental Quality Act under the general rule in Section 15061(b)(3) because "it can be

seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Applicable environmental review would have been done at the time the uses were first incorporated into the code.

PUBLIC NOTICE AND COMMENT:

The Argus published a public hearing notice on May 11, 2006.

ENCLOSURES:

Exhibits:

Exhibit "A" Zoning Text Amendment

Informational Items:

1. Ordinance Number 17-2004 §11
2. Ordinance Number 19-2004 §16

RECOMMENDATION:

1. Hold public hearing.
2. Recommend the City Council find the project exempt from the California Environmental Quality Act under the general rule in Section 15061(b)(3) of the CEQA Guidelines.
3. Recommend that the City Council find Zoning Text Amendment PLN2006-00303, as shown on Exhibit "A," is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan as previously duly approved before the error was made eliminating them as explained within the staff report.
4. Recommend that the City Council find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment because the uses were previously deemed appropriate and were unduly removed.
5. Recommend Zoning Text Amendment PLN2006-00303 to the City Council in conformance with Exhibit "A" (Zoning Text Amendment).